NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

APS Events, LLC *and* International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, AFL-CIO, CLC, Local No. 19. Case 5-CA-34875

October 30, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by the Union on April 2 and June 2, 2009, respectively, the General Counsel issued the complaint on June 30, 2009, against APS Events, LLC, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On September 15, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on September 17, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment¹

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer was received by the Regional Of-

fice on or before July 14, 2009, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated September 2, 2009, notified the Respondent that unless an answer was received by September 14, 2009, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a limited liability company organized under the laws of the State of Maryland, with an office and place of business in Glen Burnie, Maryland, has been engaged in the business of producing and staging corporate and private events.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 in locations outside the State of Maryland.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, AFL–CIO, CLC, Local No. 19, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

James T. Arth - President
Errol Rausse - Production Manager

The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All stagehand employees engaged by Respondent to work from time-to-time in the Baltimore Metropolitan area, including all of Anne Arundel County, Baltimore

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See Snell Island SNF LLC v. NLRB, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. September 11, 2009) (No. 09-328); New Process Steel v. NLRB, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); Northeastern Land Services v. NLRB, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. August 18, 2009) (No. 09-213). But see Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed sub nom. NLRB v. Laurel Baye Healthcare of Lake Lanier, Inc., __U.S.L.W.__ (U.S. September 29, 2009) (No. 09-377).

City, Baltimore County, Harford County and Howard County, Maryland.

Since about 1999, and at all material times, the Union has been the designated exclusive collective-bargaining representative for the unit and, since then, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from January 1, 2007, to December 31, 2008 (the 2007–2008 agreement).

At all times since about 1999, based on Section 9(a) of the Act, the Union has been the exclusive collectivebargaining representative of the unit.

On various dates between July 2007 and October 2008, the exact dates being presently unknown, the Respondent failed to pay wages and benefits for hours worked by unit employees in accordance with the terms and conditions of the parties' 2007–2008 agreement.²

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

Since about February 24, 2009, the Union, by written letter to James T. Arth, has requested that the Respondent furnish the Union with records showing salaries, wages, and other compensation paid to the Respondent's unit employees from January 1, 2006, to the present.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's per-

² Although the dates of this conduct fall mostly outside of the 6-month limitations period set forth in Sec. 10(b), it is well settled that "the 10(b) 6-month[] limitations period is an affirmative defense that is waived if not timely raised." *Malik Roofing Corp.*, 338 NLRB 930, 931 fn. 3 (2003); see also *Public Service Co.*, 312 NLRB 459, 461 (1993). In *Malik Roofing*, a default judgment proceeding, the complaint allegations also involved conduct outside of the 10(b) period. The Board noted that the respondent had failed to file an answer to the complaint or a response to the notice to show cause raising a 10(b) defense, and therefore found the violations as alleged. *Malik Roofing*, supra at fn.3. Accordingly, as the Respondent in this proceeding has failed to file an answer or response raising a 10(b) defense, we shall find the violation as alleged and issue an appropriate remedial order. See id.; *J.F. Morris Co.*, 292 NLRB 869, 870 fn. 2 (1989), enfd. mem. 881 F.2d 1076 (6th Cir. 1989).

In addition, the complaint alleged that: since about January 1, 2009, the Respondent, by James T. Arth, has acknowledged its failure to pay wages and benefits for hours worked by unit employees in accordance with the 2007–2008 agreement; promised the Union to make unit employees whole for all unpaid wages and benefits from July 2007 to October 2008; failed to pay wages and benefits for hours worked by unit employees in accordance with his promise; and that this conduct violates Sec. 8(a)(5) of the Act. We find it unnecessary to decide whether this conduct constitutes a separate violation of Sec. 8(a)(5) because the findings and remedy of such an additional violation would be cumulative of the violation and remedy found above. See, e.g., *Day & Zimmerman Services*, 325 NLRB 1046, 1048 fn. 14 (1998).

formance of its duties as the exclusive collectivebargaining representative of the unit.

Since February 24, 2009, the Respondent, by James T. Arth, has failed and refused to furnish the Union with the information requested by it.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to pay wages and benefits for hours worked by unit employees in accordance with the terms and conditions of the parties' collective-bargaining agreement, we shall order the Respondent to make whole its unit employees for any loss of earnings and other benefits they have suffered as a result of the Respondent's unlawful conduct, in the manner set forth in Ogle Protection Service, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).³ In the event that the 2007–2008 agreement provides for contributions to pension and benefit funds, we shall order the Respondent to make whole the funds for any failure to make the contractually-required contributions, with any additional amounts due the funds to be computed in the manner set forth in Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979). We shall further order the Respondents to reimburse employees for any losses they may have suffered as a result of their failure to make the required contributions, in the manner prescribed in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in New Horizons for the Retarded, supra.

³ In the complaint, the General Counsel seeks compound interest computed on a quarterly basis for any backpay or other monetary awards. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Glen Rock Ham*, 352 NLRB 516, 516 fn. 1 (2008), citing *Rogers Corp.*, 344 NLRB 504 (2005).

APS EVENTS, LLC 3

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with relevant and necessary information requested on February 24, 2009, we shall also order the Respondent to provide the Union with the requested information.

ORDER

The National Labor Relations Board orders that the Respondent, APS Events, LLC, Glen Burnie, Maryland, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to bargain collectively and in good faith with International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, AFL–CIO, CLC, Local No. 19, as the exclusive collective-bargaining representative of the employees in the following appropriate unit by failing to pay wages and benefits for hours worked by unit employees in accordance with the terms and conditions of the January 1, 2007, to December 31, 2008 collective-bargaining agreement:

All stagehand employees engaged by Respondent to work from time-to-time in the Baltimore Metropolitan area, including all of Anne Arundel County, Baltimore City, Baltimore County, Harford County and Howard County, Maryland.

- (b) Failing and refusing to furnish the Union with information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Make whole the unit employees and any benefit funds for any losses they may have suffered as a result of its failure on various dates between July 2007 and October 2008 to pay wages and benefits in accordance with the terms and conditions of the 2007–2008 collective-bargaining agreement, as set forth in the remedy section of this decision.
- (b) Furnish to the Union the information it requested on February 24, 2009.
- (c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an elec-

tronic copy of such records if stored in electronic form, necessary to analyze the amounts of backpay due under the terms of this Order.

- (d) Within 14 days after service by the Region, post at its facility in Glen Burnie, Maryland, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 2007.
- (e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 30, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, AFL–CIO, CLC, Local No. 19, as the exclusive collective-bargaining representative of the employees in the following appropriate unit by failing to pay wages and benefits for hours worked by unit employees in accordance with the terms and conditions of our January 1, 2007, to December 31, 2008 collective-bargaining agreement:

All stagehand employees engaged by Respondent to work from time-to-time in the Baltimore Metropolitan

area, including all of Anne Arundel County, Baltimore City, Baltimore County, Harford County and Howard County, Maryland.

WE WILL NOT fail and refuse to furnish the Union with information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole our unit employees and any benefit funds for any losses they may have suffered as a result of our failure on various dates between July 2007 and October 2008 to pay wages and benefits in accordance with the terms and conditions of our 2007–2008 collective-bargaining agreement.

WE WILL furnish to the Union the information it requested on February 24, 2009.

APS EVENTS, LLC